

REMARKS**I. INTRODUCTION**

Claims 1, 2 and 4-14 were amended. Claim 3 was cancelled in a previous amendment. No new matter has been added. Thus, claims 1-2 and 4-14 are pending in the present application. In view of the above amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable.

II. THE 35 U.S.C. § 103(a) REJECTIONS SHOULD BE WITHDRAWN

Claims 1, 2, 4-8, and 11-14 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over U.S. Patent Appl. No. 2004/0034319 to Anderson et al. ("Anderson") in view of U.S. Patent Appl. No. 2003/0065314 (hereinafter "Altshuler '314"). The Examiner also cites Laser Hair Removal, by Richard J. Ort and Christine Dierickx, Seminars in Cutaneous Medicine and Surgery, Volume 21, Issue 2, June 2002, pp. 129-144 (hereinafter "Ort I"), Optical Hair Removal, by Richard J. Ort and R. Rox Anderson, Seminars in Cutaneous Medicine and Surgery, Volume 18, Issue 2, June 1999, pp. 149-158 (hereinafter "Ort II"), and Methods of Hair Removal, by Elise A. Olsen, Journal of the American Academy of Dermatology, Vol 40, Issue 2, February 1999, pp. 143-155 (hereinafter "Olsen") to purportedly show subject matter that is known in the art. (See 01/09/2009 Office Action p. 2-3).

Claim 1 recites "[a] device for reducing growth of hairs on human skin, the device comprising a source of electromagnetic radiation that emits in a wavelength range between 550 and 1200 nm, and a control means for limiting the deliverable energy density of the electromagnetic radiation on the skin to a maximum value between 1 and 12 J/cm², wherein, during operation, the control means selects the maximum value in accordance with selected properties of the skin to be treated, selected properties being determined by a sensor measuring a reflection from the skin of the electromagnetic radiation."

The Examiner has acknowledged that Anderson does not teach a “control means that selects the treatment values based on skin type.” (See 01/09/2009 Office Action p. 3). However, the Examiner asserts that Altshuler ‘314 teaches a system “for treating tissue with electromagnetic radiation ... that provides an indication of skin type for the patient, which indication can be used to control the radiation applied.” (See 01/09/2009 Office Action p. 3). Applicants have previously argued that Altshuler ‘314 does not disclose the recitation of “the control means selects the maximum value in accordance with selected properties of the skin to be treated, selected properties being determined by a sensor measuring a reflection from the skin of the electromagnetic radiation.” (See 3/9/09 Amendment After Final, p. 5).¹ In response to this argument, the Examiner stated in the Advisory Action that “Applicant’s argument are based on skin type, however, skin type is not a limitation of the claims, only selected skin properties.” (See 3/17/09 Advisory Action).

Applicants fail to understand the Examiner’s comment. The Applicants arguments were never “based on skin type.” The claim recitation stated “the control means selects the maximum value in accordance *with selected properties of the skin* to be treated, selected properties being determined by a sensor measuring a reflection from the skin of the electromagnetic radiation.” A review of the previously submitted argument shows that the Applicants never stated that they were relying on skin type, but were relying on the claim recitation to distinguish Altshuler ‘314. Applicants maintain this argument and re-present this argument in detail below. As outlined above based on the quotations from the Examiner, it is the Examiner who raised the issue of skin type. It is the Examiner who stated Anderson does not teach a “control means that selects the treatment values based on *skin type*” and that Altshuler ‘314 teaches a system “for treating tissue with electromagnetic radiation ... that provides an indication of *skin type* for the patient, which indication can be used to control the radiation applied.” (See 01/09/2009 Office Action p. 3)(emphasis added). Is the Examiner now stating that skin type is not a property of the skin? If so, the Applicants fail to understand on what the rejection is based. It appeared to the Applicants that the Examiner was using the Altshuler ‘314 purported teaching of an indication of the skin type to obviate the recitation of “the control means selects the maximum value in accordance with selected properties of the skin to be treated.” If this is not the case, the Applicants

¹ Applicants note that the claim recitation is altered slightly in this Amendment to clarify the language of the claim

respectfully request that the Examiner clarify the rejection and state the art on which the Examiner is relying to reject this claim limitation.

However, in the interest of expediency, the Applicants will address the Examiner's rejection as best understood by the Applicants. As described extensively above, the Examiner has acknowledged that Anderson does not teach a "control means that selects the treatment values based on skin type," but relies on Altshuler '314 to cure this deficiency. (See 01/09/2009 Office Action p. 3). Altshuler '314 describes a photocosmetic device which can be used for a variety of tissue treatments. (See Altshuler '314 Abstract). Altshuler '314 describes embodiments where a "[s]ensor 124 [detects] the heating of melanin in the epidermis [to] provid[e] an indication of skin type for the patient." (See Altshuler '314 [0058]). In contrast, claim 1 recites "selected properties being determined by a sensor measuring a reflection from the skin of the electromagnetic radiation." The measuring of the heating of the melanin in the epidermis is not "measuring a reflection from the skin of the electromagnetic radiation." Accordingly, Applicants respectfully submit that Altshuler '314 does not cure the deficiencies of Anderson.

Addressing the similar limitation in the Advisory Action, the Examiner stated that "[d]etermination of skin type based on reflected light is known for example in determining sun exposure MEDs." (See 3/17/09 Advisory Action). However, Applicants respectfully point out that claim 1 recites "measuring a reflection from the skin of the electromagnetic radiation." That is, the measurement of the reflection is of the electromagnetic radiation that is emitted from the source. Neither Anderson nor Altshuler '314 teach or suggest such a recitation. Furthermore, none of Ort I, Ort II, or Olsen teach or suggest such a recitation. Accordingly, Applicants respectfully submit that neither Anderson, Altshuler '314, Ort I, Ort II, nor Olsen, either alone or in combination, teach or suggest "the control means selects the maximum value in accordance with selected properties of the skin to be treated, selected properties being determined by a sensor measuring a reflection from the skin of the electromagnetic radiation" as recited in claim 1. Because claims 2 and 4-8 depend from, and therefore include all the limitations of claim 1, it is respectfully submitted that these claims are also allowable for at least the same reasons given above with respect to claim 1.

Claim 11 has been amended to recite, “[a] method for reducing growth of hairs on human skin, comprising delivering at least one pulse of electromagnetic radiation to the skin, wherein a wavelength spectrum of the electromagnetic radiation is selected between 550 and 1200 nm, wherein an energy density of the electromagnetic radiation delivered to the skin is selected between 1 and 12 J/cm², and wherein a duration of the pulse is between 1 and 100 ms, such that anagen follicles of said hairs are induced to a resting phase in their growth cycle, *the electromagnetic radiation being selected in accordance with selected properties of the skin to be treated, selected properties being determined by a sensor measuring a reflection from the skin of the electromagnetic radiation.*”

Applicants respectfully submit that claim 11 is allowable for at least the same reasons given above with respect to claim 1. Because claims 12-14 depend from, and therefore include all the limitations of claim 11, it is respectfully submitted that these claims are also allowable for at least the same reasons given above with respect to claim 1.

Claims 9-10 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over Anderson in view Altshuler ‘314, and in further view of U.S. Patent Appl. No. 2003/0032950 to Altshuler et al. (hereinafter “Altshuler ‘950”). (See 01/09/2009 Office Action p. 3-4).

Altshuler ‘950 describes embodiments where “one or more thermal sensors 524 (e.g., a thermocouple, a thermistor) may be used to monitor the temperature indicative of a patient’s skin (e.g., the temperature at the interface of an optical system 520 and electrode 516) for use in a cooling system as described below.” (See Altshuler ‘950, p. 6, para. 0092). Thermocouples and thermistors operate by detecting radiant heat from the surface of the skin. Again, similar to Altshuler ‘314, Altshuler ‘950 does not describe “*measuring a reflection from the skin of the emitted radiation*” as recited in claim 1.

As discussed above, Anderson and Altshuler ‘314 do not disclose the teachings of claim 1. Applicants respectfully submit that Altshuler ‘950 does not cure the afore-mentioned defects of Anderson or Altshuler ‘314 with respect to claim 1. Therefore, because claims 9-10 contain

all the limitations of claim 1, Applicants respectfully submit that claims 9-10 are allowable for at least the same reasons as discussed with respect to claim 1 above.

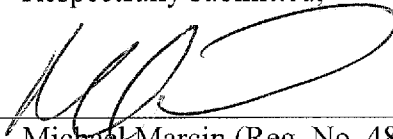
CONCLUSION

In light of the foregoing, Applicants respectfully submit that all of the now pending claims are in condition for allowance. All issues raised by the Examiner having been addressed. An early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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By:

A handwritten signature in black ink, appearing to read 'MM', is written over a horizontal line.

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